

NICE DVARS Support Services & Maintenance Agreement

THIS AGREEMENT made and entered into as of this 20th day of March 2008 by and between **NICE SYSTEMS, INC.**, a corporation organized and existing under the laws of Delaware, having its principal offices at 301 Route 17 North, 10th Floor, Rutherford, NJ 07070 (hereinafter referred to as the "Vendor", "Contractor" or "NICE"); and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor will provide Services, Parts, Preventive Maintenance, System Modifications, Software Updates and Training, as set forth in the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, and Sunset Policy Guidelines (Appendix A); and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to procure from the Contractor such Services, Parts, Preventive Maintenance, System Modifications, Software Updates and Training for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- 1.) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, and Sunset Policy Guidelines (Appendix A) and all associated addenda and attachments, and all other attachments hereto and all amendments issued hereto.
- 2.) The words "Contract Date" to mean the effective date on this Agreement.
- 3.) The words "Contractor" or "Vendor" or "Licensor" to mean Nice Systems Inc.
- 4.) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- 5.) "DVARs" means Digital Video/Audio Recording System, including all the equipment, parts, and software systems per "Appendix A"
- 6.) The word "Days" to mean Calendar Days.
- 7.) The words "Delivery Date" to mean the date specified by Aviation for delivery of the Product(s) to the County.
- 8.) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- 9.) The word "Documentation" to mean all manuals, operating instructions, technical materials and other textual or graphic materials relating to the NICE Software and Third Party Software and purchased by the County.
- 10.) "Effective Date" means the date upon which the last party to sign this contract has executed it.
- 11.) The word "Equipment" to mean the hardware, firmware, materials, apparatus, tools, suppliers, goods and other items provided by the Contractor or any of its subcontractors and vendors that are to be installed, incorporated or otherwise are intended to form part of the Work.
- 12.) "MDAD and Aviation" means the Miami-Dade Aviation Department.
- 13.) "NICE Software" means NICE proprietary software.
- 14.) The word "Product(s)" to mean Equipment, NICE Software, and Third Party Software, collectively.

- 15.) The words "Project Manager" to mean, Miami-Dade Aviation Department or the duly authorized representative which is currently Ray Davalos.
- 16.) The words " Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, and Sunset Policy Guidelines " to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor and all Equipment and Software provided to the County in connection with this Agreement.
- 17.) "Statement of Work" or "SOW" means, as to a Project, the corresponding specific statement regarding the requirements for said Project, including aspects of job requirements, performance and assessment.
- 18.) The word "Subcontractor" or "Subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- 19.) "Third Party Software" means licenses to third party software procured by NICE for the County.
- 20.) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, and Sunset Policy Guidelines (Appendix A), 3) and any associated addenda and attachments thereof.

ARTICLE 3. RULES OF INTERPRETATION

- a.) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b.) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c.) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d.) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. STATEMENT OF WORK

Prior to the commencement of Services for any new Project, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a Statement of Work for the specific Project that shall define in detail the Services to be performed. After the SOW has been accepted, a detailed requirements and design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate the terms and conditions of this Agreement.

ARTICLE 5. NATURE OF THE AGREEMENT; SCOPE OF SERVICES

- a.) The Contractor shall provide the services set forth in the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, (Appendix A) and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b.) The Contractor acknowledges that this Agreement requires the performance of all commercially reasonable things for or incidental to the effective and complete performance of all Work and Services under this Contract. All commercially reasonable things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c.) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of the County's Project Manager.
- d.) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the SOW. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all commercially reasonable changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.
- e.) County shall purchase from NICE, and NICE shall provide to County, directly or through its agents or subcontractors, the services outlined in the Silver Maintenance Contracts in (Appendix A) at the County installation site ("Site") as set forth in the attached Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, (Appendix A), as amended from time to time, the Maintenance Services ("Maintenance Services") and the additional services ("Additional Services") set forth on the Service Levels, subject to the terms and conditions set forth in this Agreement and at the prices set forth on Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, (Appendix A).
- f.) The following services shall be deemed to be outside the scope of this Agreement and NICE shall not provide Maintenance Services for any of the following:

- (i) Electrical work external to and not connected with any Products covered hereunder including, but not limited to camera installation and connection;
- (ii) Repairs that are impractical for NICE to perform due to the connection of any relevant individual Products by mechanical or electrical means to another machine or device and/or the physical inaccessibility of such individual Products;
- (iii) Maintenance of any alterations, attachments and/or other devices not furnished by NICE excluding maintenance of Third Party Software performed in accordance with the terms of the license agreement for such Third Party Software; and
- (iv) Network support for other devices connected on the same network as the Products hereunder, if such devices were not included in the list of Products.

ARTICLE 6. CONTRACT TERM

a.) This Contract shall become effective on the Effective Date and shall continue for a period of five (5) years (the "Initial Term"). The County, at its sole discretion, reserves the right to extend the Initial Term for two (2) separate and consecutive periods of five (5) years and three (3) years respectively as follows:

- i. for an additional period of five (5) years commencing on the day following the scheduled expiration of the Initial Term (the "First Extension Term"). The County must provide Contractor with written notice of its election to extend the Initial Term at least ninety (90) days prior to the scheduled expiration of the Term.
- ii. for an additional period of three (3) years commencing on the day following the scheduled expiration of the First Extension Term (the "Second Extension Term"). The County must provide Contractor with written notice of its election to extend the Term at least ninety (90) days prior to the scheduled expiration of the First Extension Term.
- iii. The Initial Term, First Extension Term, and Second Extension Term are collectively referred to in this Contract as the "Term".

b.) Notwithstanding anything to the contrary contained in this Article 6, upon the expiration of any of the Initial Term, First Extension Term, and Second Extension Term, the County, at its sole discretion, reserves the right to extend this Contract for up to one hundred eighty (180) days (a "Partial Extension"). The County must provide Contractor with written notice of its election to extend this Contract for a Partial Extension at least ninety (90) days prior to the scheduled expiration of the then current Contract period. This Contract may be further extended beyond a Partial Extension by mutual agreement between the County and Contractor, upon approval of the Board of County Commissioners.

ARTICLE 7. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) To the County**FOR ALL CONTRACTS RELATED MATTERS:**

Department of Procurement Management
Attention: Leida Altman Carrillo
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974
Phone: (305) 375-1084
Fax: (305) 375-5688
E-Mail: lcarril@miamidadegov

ADDITIONAL PROJECT-RELATED CONTACTS:

Miami-Dade Aviation Department
Project Manager: Ray Davalos
Phone: (305) 876-7868
Fax: (305) 876-0323
E-mail: RDAVALOS@miami-airport.com

Purchasing Division: Ygnacio Valdez
Phone: (305) 876-7578
Fax: (305) 876-0323
E-mail: YVALDEZ@miami-airport.com

(2) To the Contractor

NICE Systems Inc.
Attention: Boris Poberezsky
Director Client Services
301 Route 17 North, 10th Floor
Rutherford, New Jersey 07070
Tel: (201)-964-2722
Fax: (201)-964-2608
Main: 1-877-642-3847
Email: boris.poberezsky@nice.com

NICE Systems Inc.
Attention: Legal Department
301 Route 17 North, 10th Floor
Rutherford, New Jersey 07070

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 8. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a.) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including

without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of a Proposal; questions as to the interpretation of the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, (Appendix A); and claims for damages, compensation and losses.

- b.) Subject to Section 8(e) hereof, the Contractor shall be bound by all commercially reasonable determinations or orders of the Project Manager, including the withdrawal or modification of any previous order prior to the County's acceptance of the order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c.) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d.) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e.) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or expressly waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law in a court of competent jurisdiction after exhausting the provisions of this Article.

ARTICLE 9. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under

this Contract, including all costs associated with such Work and Services, shall be billed in accordance with the rates set forth in Appendix A. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 10. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Appendix A. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

**Accounts Payable
P.O. Box 526624
Miami FI 33151-6624**

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 11. DISCOUNTS

The following Discounts shall be coterminous with the term of the Agreement, including any and all options to renew,

DISCOUNTS:
Pro Forklift Option 60% Discount
Alto Forklift Option 60% Discount
NEW Pro 32 Channel recorder(s) Discount 40%
NEW Alto 32 Channel Recorder(s) Discount 40%
New System Labor Discount 20%
Silver - Nice Vision Service over 10 Years 5% per year(see attached for breakdown per year)

ARTICLE 12. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods, so long as the County's requirements remain as stated in Appendix A, Silver Maintenance Contract, End User Table of Services – Warranty & Silver Price List Pro & Alto Version 9.0, Revision 1, Price List Version 9.0.8, Amendment 4, and Sunset Policy Guidelines.

However, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof. Notwithstanding the generality of the foregoing, County agrees that if County's requirements change during the initial term or any subsequent renewal or extension hereof, the Parties shall negotiate in good faith to either (i) adjust the prices to allow NICE to continue to perform the Services herein or (ii) NICE may terminate this Agreement and refuse to provide the Services in which case, NICE will refund to County on a pro-rata basis all moneys paid and unused for the rendering of Services.

The Contractor agrees that pricing for Software, Hardware, Maintenance Services, Additional Services, and customization services shown below table.

Description	Qty	Price	Total price
Pro Forklift Option 60% Discount	32	\$37,682.00	\$1,205,824.00
Alto Forklift Option 60% Discount	32	\$ 6,616.00	\$ 211,712.00
NEW Pro 32 Channel recorder(s) Discount 40%	12	\$ 56,523.00	\$ 678,276.00
NEW Alto 32 Channel Recorder(s) Discount 40%	12	\$ 15,933.00	\$ 191,196.00
New System Labor Discount 20%	24	\$ 2,080.00	\$ 49,920.00
Silver - Nice Vision Service over 5 Years 5% per year	1	\$2,320,765.13	\$ 2,320,765.13
Allowance	5	\$100,000	\$500,000.00
		TOTAL	\$5,157,693.13

ARTICLE 13. ADDITIONAL EQUIPMENT, SOFTWARE, OR SERVICES

During the Term of this Contract, the County may order additional Equipment, NICE Software, Third Party Software or Services provided they are available. Each order must refer to this Contract and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Contract will govern the purchase and sale of the additional Equipment, NICE Software, Third Party Software, or Services.

ARTICLE 14. TITLE AND RISK OF LOSS

Title and risk of loss shall pass at time of receipt by the County; warranty will commence upon acceptance; and, payment is due in accordance with the terms of this Contract.

ARTICLE 15. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of***

County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's reasonable judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 16. MANNER OF PERFORMANCE

- a.) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the Project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b.) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County.

Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c.) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d.) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e.) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f.) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 17. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 18. SECURITY PROCEDURES AT SELECTED COUNTY FACILITIES

a) THE MIAMI INTERNATIONAL AIRPORT (MIA)

Contractor must follow all security procedures required of workers at MIA. This will include security checks and passes for all employees, a special driving course for those who operate a vehicle on the aircraft operating area (AOA), additional badges to work within the U.S. Customs service area and may including bonding for a Customs I.D.

For Customs I.D., call (786) 265-5715 for information and pick-up forms Monday-Friday. For Miami-Dade Aviation Department I.D., call (305) 876-7188 for appointment and to pick-up package. For AOA training call (305) 876-7359 for information and application. Vendors are responsible for all cost incurred in obtaining security badges. Security clearance must be obtained prior to start of contract.

ARTICLE 19. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a.) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b.) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c.) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d.) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 22. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in this Agreement. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 23. AUDITS

The Contractor agrees that the County's Inspector General shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 24. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County, which consent shall not be unreasonably withheld.

ARTICLE 25. MUTUAL OBLIGATIONS

- a.) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes

all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b.) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c.) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 26. TERMINATION AND SUSPENSION OF WORK

- a.) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b.) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County.
- c.) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d.) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor, and in such event:
- e.) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and

- e.) In the event that the County exercises its right to terminate this Agreement for convenience pursuant to this Article the Contractor will be compensated as stated, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement for convenience and the Work Order up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f.) All compensation pursuant to this Article are subject to audit.

ARTICLE 27. EVENT OF DEFAULT

- a.) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b.) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within

the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

ARTICLE 28. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 29. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 30. PATENT AND COPYRIGHT INDEMNIFICATION

- a.) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b.) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

- c.) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d.) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e.) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.
- f.) The foregoing indemnity shall not apply if the infringement or alleged infringement arises out of (i) NICE's compliance with specifications or designs of the County; (ii) the Equipment or NICE Software being modified by, combined with, added to, interconnected with and/or used with any equipment, apparatus, device or software not supplied by NICE; (iii) the modification to the Equipment or NICE Software by any person or entity other than NICE; or (iv) misuse of the Equipment or NICE Software.

ARTICLE 31. PROPRIETARY RIGHTS

The Contractor shall own all rights, title and interests in and to all corrections, modification, enhancements, programs, information and work product conceived, created or developed, alone or with the County, as a result of or related to the performance of this Agreement, including all proprietary rights therein and based thereon. The Contractor hereby grants to the County a nonexclusive license to use that portion of such corrections, modifications, enhancements, programs, information, and work product that the contractor actually delivers to the County pursuant to this Agreement.

ARTICLE 32. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the Term of the Contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "County Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the County Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes, but not limited to, mainframe, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

All parties acknowledge and agree that all work performed under this Agreement is considered to contain Security Sensitive Information ("SSI") as defined by Title 49 Code of Federal Regulations Parts 15 and 1520 *et. seq.*

ARTICLE 33. SOURCE CODE ESCROW

Contractor at their expense, after final system acceptance and upon County's written request, will deposit the source code for the installed and accepted NICE Software into Contractor's master source code escrow account with Iron Mountain, naming the County as a beneficiary thereto, provided the County is in good standing with this Agreement, the applicable Software License Agreement and Maintenance and Support Agreement. Once the County is established as a beneficiary to the escrow account, deposits of source code associated with any future installed release updates that the County installs will be deposited into the same escrow account provided the County remains in good standing with license and support agreements for the applicable NICE Software.

The deposited source code will be released to the named beneficiary only in the event the Contractor becomes bankrupt, or ceases to offer support of the applicable NICE Software application unless support is continued by an assignee of the Contractor. In the event the source code is released to the County, the County shall agree to use the code exclusively for internal purposes under terms and conditions of this Agreement and the applicable Software License Agreement, and solely for trouble analysis, namely isolating, diagnosing, and fixing problems in the applicable NICE Software.

Prior to receiving access to such source code, the County shall enter into a confidentiality agreement in form and substance reasonable satisfactory to Contractor. Nothing in this provision provides for escrow of source code associated with any Third Party Software. In the event the County fails to keep the Maintenance and Support Agreement in effect, Contractor's obligations under this provision will immediately cease without notice, the County's rights as beneficiary under the escrow will be cancelled, and all deposited source code will be returned to Contractor.

ARTICLE 34. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement void. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 35. BUSINESS ENTITY AFFIDAVITS

Prior to entering into any contract with the County, a firm desiring to do business with the County shall, as a condition of award, certify that it is in compliance with the all the Ordinances in the Affidavits pages 1 through 8.

Failure to comply with the requirements may result in the contract being declared void, the contract being terminated and/or the firm being debarred.

ARTICLE 36. AFFIRMATIVE ACTION/NON DISCRIMINATION OF EMPLOYMENT, PROMOTION AND PROCUREMENT PRACTICES (ORDINANCE NO. 98-30)

In accordance with the requirements of Ordinance No. 98-30, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Business Development. Said firms must also submit, as a part of their proposals/bids to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit (**see attached Form A-8**). Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Business Development. Firms claiming exemption must submit, as part of their proposal/bids to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit (**see attached Form A-8**) in accordance with Ordinance 98-30. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women-owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the Ordinance. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their bid/proposal.

ARTICLE 37. ORDINANCES, RESOLUTIONS AND/OR ADMINISTRATIVE ORDERS

To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Contractor must contact the **Clerk of the Board at (305) 375-5126** or go online to www.miamidade.gov.

ARTICLE 38. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a.) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b.) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c.) Environmental Protection Agency (EPA), as applicable to this Contract.
- d.) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e.) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f.) Miami-Dade County Code Section 10-38 "Debarment".
- g.) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h.) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 39. CONFLICT OF INTEREST

The Contractor represents that:

- a.) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b.) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i. is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii. is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c.) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d.) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e.) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 40. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a.) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

- b.) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c.) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 41. CONFIDENTIALITY

- a.) All parties acknowledge and agree that all work performed under this agreement is considered to contain Security Sensitive Information ("SSI") as defined by Title 49 Code of Federal Regulations Parts 15 and 1520 *et. seq.*
- b.) All materials, data, transactions of all forms, financial information, documentation, inventions, designs, methods, software and technical documentation obtained by one party (a "Receiving Party") from the other party (a "Disclosing Party") in connection with the Services performed under this Agreement or which the Disclosing Party holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the Disclosing Party, be used by the Receiving Party or its employees, agents, subcontractors or suppliers for any purpose other than for the performance of this Agreement, unless required by law. In addition to the foregoing, all of the Disclosing Party's employee information and financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Receiving Party nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party unless required by law. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- c.) The Receiving Party shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the Disclosing Party in writing if it learns of any unauthorized use or disclosure of its Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Receiving Party agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information of the Disclosing Party.
- d.) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the Disclosing Party shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the Disclosing Party, upon the completion of the Services performed hereunder, the Receiving Party shall immediately turn over to the Disclosing Party all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Receiving Party or its employees, agents, subcontractors or suppliers without the prior

written consent of the Disclosing Party. A certificate evidencing compliance with this provision and signed by an officer of the Receiving Party shall accompany such materials.

e) Notwithstanding anything else in this Agreement to the contrary, including but not limited to the foregoing, the Parties acknowledge that the County is governed by Florida's Public Records Laws memorialized in Chapter 119 of the Florida Statutes and that any compliance or good-faith attempt to comply with that Chapter shall not be considered a breach of this Agreement.

ARTICLE 42. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

- a.) Use of information only for performing services required by the contract or as required by law;
- b.) Use of appropriate safeguards to prevent non-permitted disclosures;
- c.) Reporting to Miami-Dade County of any non-permitted use or disclosure;
- d.) Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
- e.) Making Protected Health Information (PHI) available to the customer;
- f.) Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
- g.) Making PHI available to Miami-Dade County for an accounting of disclosures; and
- h.) Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 43. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law, all of the County's rights hereunder shall continue in full force and effect in accordance with the provisions of 11 U.S.C. 365(n) or any successor statute.

ARTICLE 44. FORCE MAJEURE

Performance by each party shall be pursued with due diligence in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of due diligence of the affected party or its subcontractors or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses (other than Licensor's occupational licenses), blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall promptly provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.

ARTICLE 45. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 46. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 47. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 48. RELOCATION OF PRODUCTS

In addition to the foregoing responsibilities of the County, the County shall provide NICE with at least sixty (60) days prior written notice of its intention to move any or all of the individual Products to a location other than the Site. An authorized NiceVision technician shall supervise the dismantling and packing of the Products and shall inspect and reinstall the Products at the new location. Such services shall be billed to the County as Additional Services in cases where service is done by NICE personnel. If, upon inspection following relocation and reinstallation, NICE Personnel determine that any individual Product is not in good operating condition as a result of causes beyond NICE's control, NICE shall endeavor to restore such individual Product to good operating condition and shall bill the County for all applicable additional labor, materials, parts and adjustments at the rates and prices for Additional Services.

ARTICLE 49. TESTS

- a.) Each system provided to the County and installed at a specific site will be subject to several tests, including a System Acceptance test In order to assure system

performance, the County will require a sequence of tests that shall be conducted at no additional cost the County.

- b.) Prior to shipment, Contractor shall fully inspect and test each item of NICE Software and Third Party Software when first ordered by the County, and provide evidence thereof in the form of an inspection and/or test report that the items perform in accordance with the Documentation therefore.
- c.) Within ten (10) days after provision of the inspection and/or test report to the County, the Contractor shall deliver system for testing in accordance with **Section 53(e)**.

ARTICLE 50. EXTENSION OF TIME

- a.) If the Contractor is delayed at any time hereunder due to any of the following then the affected schedule or the required performance of Work shall be extended by the County for a reasonable time, subject to the following conditions:
 - i. The cause of the delay is beyond the Contractor's reasonable control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been reasonably anticipated by the Contractor by reasonable investigation; and
 - ii. The completion of the Work will be actually and necessarily delayed by the causes set forth in "i" above; and
 - iii. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
 - iv. The Contractor has provided a written request and other information to the County, as described in subsection (d) below, within ten (10) business days after the Contractor knows of any cause which will result in a delay for which the Contractor may request an extension of time. The Contractor shall specifically state in such notice that an extension is or may be requested and identify the cause of the delay, describing the nature and its effect on the completion of the affected portions of the Work identified in the notice.
- b.) All references in this Article to the Contractor shall be deemed to include subcontractors and suppliers, all of whom shall be considered as agents of the Contractor.
- c.) The period of any extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently determines that any information provided by the Contractor in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.
- d.) The County may require the Contractor to furnish such additional information or documentation, as the County shall reasonably deem necessary or helpful in considering an extension request. The Contractor understands an extension of time will not be granted unless the Contractor affirmatively demonstrates that the circumstances shown justify such extension.

- e.) Within thirty (30) days of its receipt of all information and documentation as may be required by the County, the County shall advise the Contractor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- f.) Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in subsection (a.) (iv.) above shall be a condition precedent to the Contractor's rights hereunder.
- g.) Should any person seek a restraining order, preliminary injunction or an injunction, of which the Contractor becomes aware, which may delay the Services, the Contractor shall promptly give the County a copy of all legal papers received or prepared or received by the Contractor in connection with such action or proceeding.
- h.) Neither permitting the Contractor to proceed with the Work subsequent to any missed schedule or performance of any Work (as such date may have been extended pursuant to Article 51 "Extension of Time Not Cumulative") nor the making of any payments to the Contractor shall compromise the County's contractual right to assess damages or to declare the Contractor in default.

ARTICLE 51. EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 50 "Extension of Time" above, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be granted for the delay. In addition, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 52. REVIEWING DELIVERABLES

The Contractor agrees that all Deliverables are required to be submitted for review and approval by the County. The Contractor understands that the County shall have final approval on all Deliverables, provided that final approval shall be based upon the tests set forth in Section 53(e) hereof.

In reviewing the Deliverables, the Contractor understands that the County will provide the Contractor with:

- a.) a written notification of the County's approval,
- b.) a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a deficiency, or,

- c.) in the case of a Deliverable that does not meet the requirements Section 53 hereof, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

Failure by the County to provide a notice of approval in connection with a Deliverable within the time period set forth in the applicable Statement of Work will constitute the County's approval of such Deliverable.

Furthermore:

- a.) For each Deliverable made hereunder, the County shall have thirty (30) business days, commencing on the first business day after receipt by the County of notification from the Contractor that the Deliverables have passed the tests described in Section 53(e) hereof, to verify whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of discrepancies, or whether it is unacceptable and therefore disapproved, all in accordance with the terms of the applicable Statement of Work.
- b.) Unless an extension of time has been granted by the County pursuant to Article 50 "Extension of Time", within thirty (30) business days after receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions and/or modifications for a second review by the County.
- c.) If after the second review period the Deliverable remains unacceptable for the County's approval based upon the criteria set forth in Section 53(e) hereof and the Statement of Work, the County may direct the Contractor to:
 - i. Proceed with the Work subject to the correction of all outstanding deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a mutually agreed upon date correcting such deficiency or deficiencies; or,
 - ii. Suspend all Work being performed in regard to the execution of the Agreement, except those Services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval. Any suspension of the Work under this provision shall not alter the County's right to assess damages in the event that the Work are not completed in accordance with other provisions of this Agreement.

The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time for such correction set forth herein.

ARTICLE 53. DELIVERY AND INSTALLATION

- a.) After receipt of the purchase order executed by both parties hereto, on the date set forth in such order, NICE shall deliver the Products purchased in such purchase order to the site designated in such purchase order ("Customer Site"). NICE will obtain approval of

shipping method from County prior to any shipments. The price shown on the purchase order and all transportation provided hereunder are Freight On Board (F.O.B.) NICE's premises in New Jersey ("F.O.B. Site"). Customer shall be responsible for all shipping and insurance costs ("Shipping Costs"). Title and risk of loss to the Products shall pass to County immediately upon the Products leaving the F.O.B. Site. If NICE pre-pays any of the Shipping Costs, NICE shall invoice County for all such Shipping Costs incurred by NICE or its agents, and County shall promptly pay such invoice.

- b.) Prior to the date agreed by the parties for installation, County shall provide NICE or NICE's designated installer with reasonable access to the installation site for purposes of determining site readiness for installation and shall designate an individual on County's staff to serve as a contact person for all site preparation and installation issues. County shall undertake, at its own expense, to prepare and make available the installation site for the Products according to NICE's instructions, which may include specific instructions for each Product. County also shall provide at its own expense all labor, equipment and other materials required to move the Products from the entrance of county's premises at the Customer Site to the installation site, including without limitation any lifting gear, carpentry, piping, electrical power supply as specified by NICE, power cable access points, telephone access in close proximity to where the Products will be installed, and working conditions as in the opinion of NICE are necessary for the installation of the Products. Prior to and during installation of the Products, County shall provide suitable and safe space for storage of the Products and any materials incident to installation, and shall assume all risk of loss in connection therewith. County shall obtain at its cost and keep effective all permissions, licenses and permits, if any, whenever required in connection with the installation and/or use of the Products and the site where the Products will be situated.
- c.) The time frame(s) for initial delivery by Contractor of any Deliverables to County hereunder shall be set for the in the applicable Statement of Work.
- d.) Contractor agrees to do all things necessary for proper installation and to perform its installation obligations hereunder in an orderly, skillful and expeditious manner, with sufficient labor and materials to ensure efficient and timely completion of such obligations. If applicable, Contractor shall coordinate with the Project Manager all work with all other Contractors and/or County personnel performing work at the Site(s) to complete the installation. The County shall be responsible for resolving all disputes relating to Site access between Contractor and other contractors. Except as provided to the contrary in Section 53(b) above, Contractor shall provide all materials necessary to proper installation of the Products. The County shall provide reasonable working and secure storage space for the performance by Contractor of the installation services described herein. Contractor agrees that all installation work will be performed neatly and at all times Contractor shall keep Site(s) free from waste materials and rubbish resulting from the services being performed by Contractor.
- e.) Installation testing shall consist of the tests that are described in the applicable Statement of Work, which are to be conducted by Contractor and observed by the County. The purpose of these tests is to demonstrate the complete operability of the system(s) in conformance with the requirements of the Contractor's installation checklist. This will include an actual demonstration of all required software features. All tests shall be in accordance with test plans and procedures prepared by Contractor and previously reviewed by the County. In the event of any outstanding deficiencies at the conclusion

of installation testing, Contractor shall be responsible for instituting necessary corrective measures, and for subsequently satisfactorily demonstrating and/or re-demonstrating system performance.

ARTICLE 54. SOFTWARE

The Contractor shall provide the County with documentation, satisfactory to the County, confirming that the Contractor has acquired on the County's behalf all software licenses required hereunder.

- a.) In the event the County purchases a license for NICE Software, the Contractor shall provide to the County with the production version of the NICE Software all Documentation associated with such NICE Software that is generally provided by the Contractor to its licensees of such NICE Software. The Documentation will in all cases be fully applicable to the use of the NICE Software with the associated Equipment, and will identify and reflect any particular features of the associated Equipment which may affect the normal use and operation of the NICE Software. The Contractor shall deliver to the County three copies of said Documentation. The County will have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary for its internal use.
- b.) Subject to payment of the applicable fees by the County, the Contractor shall secure and administer for the County, in the County's name, any and all necessary sublicenses or direct licenses for the Third Party Software, subject to the terms of the third party licenses.

ARTICLE 55. SOFTWARE LICENSE

The NICE Software is licensed to the County in accordance with Contractor's standard end user license agreement, the current version.

ARTICLE 56. UPDATES AND UPGRADES

In the event the Contractor markets an upgraded or enhanced version of a particular piece of NICE Software covered within the Contract, the County shall receive such versions in accordance with the Maintenance Services.

ARTICLE 57. SOFTWARE REVISION

The Contractor understands the County may require changes to the NICE Software, which is outside the specification of the existing NICE Software. When requested by the County, the Contractor shall provide the requested system enhancements/modifications as per a mutually agreed Statement of Work. Upon the County's request for such enhancements/modifications the County shall prepare a scope of work and the Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

In no event shall the Contractor perform any Services on the task unless the County issues a written notice to the Contractor to proceed with the task.

Following the County's enhancements/modification acceptance, such

enhancements/modification shall thereafter be considered a part of the NICE Software for all purposes under this Agreement, provided that separate maintenance terms might apply. The Contractor shall provide the County, if so requested with written confirmation of the date the enhancements/modification was applied to the NICE Software, and any and all Documentation relating to the NICE Software and or enhancements/modification thereto.

If any such enhancements/modification is not acceptable to the County, based upon mutually agreed criteria, the County may refuse to accept same, and, in such event, the Contractor agrees to maintain the NICE Software in the form in effect on the date the Contractor requested the County to accept such update.

ARTICLE 58. OWNERSHIP OF LICENSED SOFTWARE

The Contractor hereby warrants and represents that the Contractor possesses all rights to and interests in the NICE Software, and all portions thereof, or otherwise have the right to grant to the County the licenses provided in Article 54 and 55 "Software" and "Software License" hereof, without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Contractor.

ARTICLE 59. OPERATING ENVIRONMENT FOR INFORMATION SYSTEMS

The NICE Software, and each module or component and function thereof, will be capable of operating fully and correctly in the operating environment identified in the Silver Maintenance Service, End User Table of Services – Warranty & Silver, Price List: Pro & Alto Version 9.0, Revision 1, and Price List Version 9.0.8, Amendment 4, as referenced in Appendix A.

ARTICLE 60. WARRANTIES

- a.) Contractor represents and warrants that: (a) Contractor owns or has all right, title and interest to the NICE Software to license the NICE Software to the County; (b) at the time the NICE Software is provided to County, the media on which the NICE Software is recorded and the documentation related to the NICE Software shall be free from defects in materials and workmanship; (c) at the time the NICE Software is provided to County, it does not contain any viruses, time bombs or other disabling pre-programmed devices or features that in any way may adversely impact the County's use of the NICE Software; and (d) the NICE Software and all Contractor supplied modifications to such NICE Software, will perform in accordance with the specifications and Documentation therefore.
- b.) NICE warrants that the Products will be free from defects in material and workmanship under conditions of normal use for a period of twelve (12) months after the date of installation or fifteen (15) months from the date of shipment, whichever comes first ("Warranty Period"). Should the Products or part thereof fail, to be free from defects in materials or workmanship or fail to operate substantially in accordance with NICE's applicable functional specifications, at any time during the Warranty Period, County's sole and exclusive remedy shall be for NICE to repair or replace, or cause to be repaired or replaced, the Products or part thereof at no additional charge to County; provided that County has promptly reported same to NICE and NICE has, upon inspection, found such Products or part thereof actually to be defective. Any warranty applicable to NICE Software or Third Party Software shall be set forth in the licenses therefore. If the Products or any part thereof is subject to warranty, NICE shall at its cost pay for on-site

inspection and labor ("Warranty Service"), if such Warranty Service is deemed by NICE to be commercially practicable, and for the costs of any necessary shipment and handling to ship the Equipment or part thereof from County to NICE and from NICE to County. If any Products or part thereof: (i) is excluded from warranty; (ii) is returned after the Warranty Period; or (iii) is found by NICE, not to be defective, County shall pay NICE for any costs incurred for shipping and handling and for any Warranty Service at NICE's then prevailing rates or such other rates as may be agreed by the parties in writing. The warranty provided does not include damage to the Products resulting from a cause other than part defect or malfunction, including without limitation: (i) improper storage, misuse or unreasonable use; (ii) neglect, accident, fire, lightning, power or air conditioning failure, unusual physical or electrical stress caused by forces or elements external to the Products, or other hazard. The above warranty also does not apply if the original identification marks on such Products or part thereof have been removed or altered.

- c.) Contractor hereby assigns to the County (to the extent allowable), and the County shall have the benefit of, any and all subcontractor's and suppliers' warranties and representations with respect to Third Party Software provided hereunder. NICE represents to County that all Services provided to County hereunder will be performed in a workmanlike manner.

ARTICLE 61. PROJECTS AND SERVICES

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined Projects ("Projects") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Services").

Disaster Recovery: The parties will develop a Disaster Recovery Plan with provisions for services related to Disaster Recovery that threatens the ability of MDAD to support system critical functions. Disasters may range from substantial natural events, such as hurricanes to human error such as a loss of data that requires the need for recovery services.

ARTICLE 62. Moves Add Changes (MAC)

The first step for a MAC would be for the requester to contact NICE support to determine if the MAC can be performed without engaging NICE. MDAD will first consult with NICE and any appropriate sub-system provider with the coordination of NICE to formulate a Method of Procedure (MOP) for successful implementation of the MAC. Then a MAC request will be submitted to NICE. NICE will then work with MDAD to produce a work order estimate. MDAD will evaluate the work order estimate and decide whether or not to issue a work order. If a work order is issued NICE will then design the MAC and transmit to MDAD. MDAD will review the MAC design and transmit acceptance back to NICE via an IPON. NICE will then test and implement the MAC, engaging the sub-system providers where necessary. Finally, the MAC will be closed and MDAD notified that the MAC is complete.

ARTICLE 63. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, Contractor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- a.) Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- b.) Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- c.) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

NOTE: DADE COUNTY CONTRACT NUMBER AND TITLE OF CONTRACT MUST APPEAR ON EACH CERTIFICATE.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

64. LIMITATION OF REMEDIES

a.) Contractor's liability and the County's remedy shall be as follows:

- i. In all situations involving performance or non-performance of Equipment or programming (other than licensed software) furnished under this Agreement, the County's remedy is (A) the adjustment or repair of the Equipment or replacement of its parts by Contractor, or at Contractor's option, replacement of the Equipment or correction of programming errors, or (B) if, after repeated efforts, Contractor is unable to install the Equipment or replacement Equipment, model upgrade or feature in good working order, or to restore it to good working order, or to make programming operate, all as warranted, the County shall be entitled to recover actual damages to the limits set forth in this Article 64. For any other claim concerning performance or non-performance by Contractor pursuant to, or in any other way related to the subject matter of, this Agreement or any order under this Agreement, the County shall be entitled to recover actual damages to the limits set forth in this Article 64.
- ii. In connection with the County's purchase of Equipment under this Contract, the following shall apply: Contractor's entire liability for damages to the County for any

cause whatsoever, and regardless of form of action, whether in contract or in tort including negligence, shall be limited to the greater of \$500,000 or the appropriate price stated herein for the specific Equipment that caused the damages or that are the subject matter of or are directly related to the cause of action.

- iii. In connection with the County's purchase of hardware maintenance services, software maintenance services, or for services other than hardware or software maintenance under this Contract, the following shall apply: Contractor's entire liability and the County's exclusive remedy for damages to the County for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to actual damages up to the greater of \$500,000 or an amount equal to twelve (12) months maintenance charges which would be due for the specific Equipment under this Contract that caused the damages or that are the subject matter of, or are directly related to, the cause of action; whichever amount is greater will apply. Such maintenance charges will be those in effect for the specific Equipment when the cause of action arose.
- iv. In connection with the County's acquisition of licensed software, including personal computer licensed software, the following shall apply: Contractor's entire liability and the County's exclusive remedy shall be as follows: In all situations involving performance or non-performance of licensed software furnished under this Contract, the County's remedy is (A) the correction by the Contractor of licensed software defects, or (B) if, after repeated efforts, the Contractor is unable to make the licensed software operate as warranted, the County shall be entitled to recover actual damages to the limits set forth in this section. For any other claim concerning performance or non-performance by the Contractor pursuant to, or in any way related to, the subject matter of this Agreement the County shall be entitled to recover actual damages to the limits set forth in this Article 64. Contractor's liability for damages to the County for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the greater of \$500,000 or the one time charges paid for, or any monthly license or initial license charges which would be due for twelve (12) months use of the licensed software that caused the damages or that is the subject matter of, or is directly related to, the cause of action and shall include any initial or process charges paid to the Contractor; whichever amount is greater will apply.
- v. Contractor shall hold and save the County harmless for any and all suits and judgments against the County for personal injury or damage to real or tangible personal property caused by Contractor's tortious conduct in the performance of this Agreement provided that, (A) the County promptly notifies Contractor in writing of any claim, (B) Contractor shall be given the opportunity, at its option, to participate and associate with the County in the control, defense and trial of any claims and any related settlement negotiations and, provided further, that with respect to any claim, or portion thereof, for which Contractor agrees at the initiation of such claim that Contractor shall save and hold the County harmless, Contractor shall have the sole control of the defense, trial and any related settlement negotiations, and (C) the County fully cooperates with Contractor in the defense of any claim.
- vi. In no event will Contractor be liable for (A) any damages caused by the County's failure to perform the County's responsibilities, or for (B) any lost profits or other consequential damages, even if Contractor has been advised of the possibility of

such damages, or for (C) any claim against the County by any other party, except as provided in the hold harmless provision of the preceding paragraph(s) of this Article 64.

- vii. The language in this Article 64 will prevail where in conflict with any portion of this Agreement. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement under Article 31. The County may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due to Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The County may set off any liability or other obligation of the Contractor or its affiliates to the County against any payments due the Contractor under any contract with the County.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

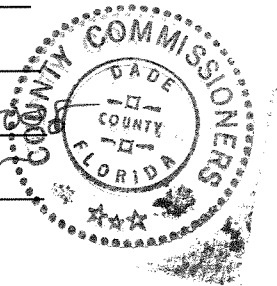
NICE Systems, Inc.

By: E. Gorev
 Name: Erin Gorev
 Title: President & CEO
 Date: 11/30/07
 Attest: [Signature]
 Corporate Secretary

Corporate Seal

Miami-Dade County

By: [Signature]
 Name: _____
 Title: _____
 Date: March 20, 2008
 Attest: [Signature]
 Clerk of the Board



Approved as to form
and legal sufficiency

[Signature]
 Assistant County Attorney

APPENDIX A

NICE Systems, Inc.

Silver Maintenance Contract

End User Table of Services – Warranty & Silver

Price List Pro & Alto Version 9.0, Revision 1

Price List Version 9.0.8, Amendment 4

NICE Vision Service Quotation

NICE Sunset Policy Guidelines